

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CIVIL ACTION NO. 05-6339
	:	
v.	:	
	:	CRIMINAL ACTION NO. 03-267
CECILIO HERNANDEZ-CARBAJAL	:	

MEMORANDUM

Baylson, J

December 29, 2005

Presently before the Court is the Defendant's Petition under 28 U.S.C. § 2255, asserting that he should be granted post-conviction relief because he was denied the effective assistance of counsel.

In this case, the Defendant signed a plea agreement in which he waived any right of direct appeal and also any right to file a collateral attack on his sentence. Although the plea agreement stipulated that the Defendant was entitled to a three-point reduction in his offense level for acceptance of responsibility, when the probation officer preparing the presentence report interviewed the Defendant, Defendant declined responsibility for the narcotics for which he plead guilty, and also discontinued the proffer sessions, which he had been having with the United States Attorney's Office. As a result, the presentence report did not recommend a three-level reduction, and the government opposed it.

The Court held an extensive sentencing hearing in which certain testimony was taken. Based on all the facts, the Court ruled that the Defendant was not entitled to the three-level reduction.

The Defendant appealed from his sentence, and the Third Circuit dismissed the appeal.

In United States v. Khattak, 273 F.3d 557 (3d Cir. 2001), the court held that waivers of appeal are valid as long as entered into knowingly and voluntarily, and will divest the district court of jurisdiction over a collateral attack.

In this case, the colloquy with Defendant at the time of his guilty plea was clear. As to the merits, he specifically stated that he was satisfied with the services of his counsel and that she had done everything for him that he wanted her to do as of that time. The Court's refusal to grant Defendant the three-level departure was based on the Defendant's own conduct. The record shows that Defendant's counsel represented him completely. The Defendant does not present any facts to indicate that a hearing should be held or that his agreement to forego collateral attack on his conviction should be ignored for any reason.

An appropriate Order follows.

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ORDER

AND NOW, this 29th day of December, 2005, the Petition under 28 U.S.C. § 2255 (Doc. No. 41) is DISMISSED for the reasons stated in the foregoing Memorandum, and a certificate of appealability is DENIED.

BY THE COURT:

s/Michael M. Baylson

Michael M. Baylson, U.S.D.J.